TING SIE HUONG

v.

THE STATE ATTORNEY-GENERAL

FEDERAL COURT, KUCHING
GEORGE SEAH FJ
MOHD. AZMI FJ
SYED AGIL BARAKBAH FJ
[CIVIL APPEAL NO. 193 OF 1984]
21 JANUARY 1985

CIVIL PROCEDURE: *Appeal - Jurisdiction of Federal Court - Rejection of application of admission as an advocate - Whether appealable - Decision of Chief Justice - Whether appealable.*

LEGAL PROFESSION: *Application for admission under s. 4(1)(d), Sarawak Advocates Ordinance (Cap. 110) - Whether applicant qualified - Admission as solicitor of Supreme Court of Hong Kong - Whether Hong Kong a "territory within the Commonwealth" - Section 2, Interpretation and General Clauses Ordinance 1948 - Applicability of Ordinance - Section 65(2), Interpretation Act 1967 - Whether applicant "legal practitioner" - Sections 4(1)(b), (d), 8(1) Sarawak Advocates Ordinance - Section 4, Solicitors Act 1957 (UK).*

The appeal was against the decision of the Chief Justice of the High Court in Borneo in dismissing an application by the appellant for admission as an advocate under s. 4(1)(d) of the Sarawak Advocates Ordinance (Cap. 110) ("the Ordinance"). The appellant passed Parts I and II of the United Kingdom Solicitors' Qualifying Examination in 1979, went to Hong Kong, and after he had served for two years as an articled clerk to a firm of solictors, was admitted as a solicitor of the Supreme Court of Hong Kong in 1982. During the hearing of the appeal, a preliminary objection was raised by the respondent that the appeal was not properly before the Federal Court.

Held:

[1] The Federal Court had jurisdiction to hear and determine the appeal under s. 67(1) of the Courts of Judicature Act 1964.

(a) The decision of the Chief Justice in respect of the rejection of an application for admission as an advocate could be appealed against. Section 14 of the Ordinance gives power to the Federal Court to hear and determine appeals regarding decisions as an application to be admitted as an advocate. If the legislature had intended the decision of the Chief Justice to be final, it would have said so by express words inasmuch as such an interpretation cannot arise by implication or by inference [s. 68(1)(d), Courts of Judicature Act, 1964.]

(b) The Federal Court had power to hear and determine the appeal though it was from the decision of the Chief Justice. Since the defination of a "Judge" includes a "Chief Justice", and as the decision of a Judge is appealable to

the Federal Court, under s. 67(1) of the Courts of Judicature Act, 1964, it follows that the decision of the Chief Justice exercising his ordinary civil jurisdiction of the High Court, under the Sarawak Advocates Ordinance, is also appealable. *(Dason Gaban v. Zulkifle bin Majun & Ors.* [1982] 1 MLJ 315.

[2] The appellant was not qualified as a "legal practitioner" under s. 4 (1)(d) of the Ordinance for admission as an advocate thereof.

(a) The expression "any territory within the Commonwealth" in s. 4(1)(d) includes the Crown colony of Hong Kong, the term "the Commonwealth" being given the meaning assigned to it by s. 2 of the now repealed Interpretation and General Clauses Ordinance 1948.

(b) However the appellant did not qualify under s. 4(1)(b) of the Ordinance for, as he had practised for less than three years, he did not qualify to be admitted as a solicitor in the United Kingdom Solicitors Act, 1957.

(c) Furthermore, the appellant had only a limited right of audience in the Courts. The term "legal practitioner" should be given a construction to accord with the provision of s. 8(1) of the Ordinance.

[Appeal dismissed.]

Cases referred to:
Attorney-General v. Sillem [1864] 10 HL Cas 703
Kulasingam v. Public Prosecutor [1978] 2 MLJ 243
Dabson Gaban v. Zulkifle bin Majun & Ors. [1982] 1 MLJ 315

Legislation referred to:
Courts of Judicature Act 1964, ss. 3, 67(1), 68 (1)(d)
Federal Constitution, art. 121(2)(a), 128(3)
Interpretation Act 1967, s. 65(2)
Interpretation and General Clauses Ordinance 1948, s. 2
Advocates Ordinance (cap.110) (Sarawak), ss. 4(1), (1)(b), (1)(d), 6, 8(1), 14
Solicitors Act 1957 [UK], s. 4

For the appellant - in person
For the respondent - Abdul Hamid Yusoff, Deputy State Attorney-General
For the Sarawak Advocates Association (watching brief) - J.C. Fong

JUDGMENT

George Seah FJ:

This is an appeal against the decision of the Honourable the Chief Justice of the High Court in Borneo in dismissing an application by the appellant for admission as an advocate under s. 4(1) of the Sarawak Advocates Ordinance (Cap. 110). The appellant was born in Sibu, Sarawak in 1954. After completing his secondary education there he enrolled with the Law Society of England and Wales as a student and passed both Parts I and II of the Solicitors' Qualifying Examinations in 1979. He then went to Hong Kong and after serving for two years as an articled clerk to a firm of solicitors he was admitted as a solicitor of the Supreme Court of Hong Kong in the year 1982.

Before dealing with the merit of the appeal we would like to dispose of a preliminary objection raised by the Deputy State Attorney-General of the State of Sarawak that the appeal is not properly before the Federal Court. The appellant, who appears in person, argued that the Federal Court has jurisdiction to hear and entertain this appeal.

It cannot be disputed that the creation of a right of appeal is an act which requires legislative authority. Neither the inferior nor the superior tribunal, nor both combined, can create such a right, it being essentially one of the limitation and of the extension of jurisdiction *(Attorney-General v. Sillem* [1864] 10 HL Cas 703). In *Kulasingam v. Public Prosecutor* [1978] 2 MLJ 243 at p. 244 Suffian LP said:

> ... there is no inherent right of appeal from a lower to a higher Court, so that the subject may appeal if and only if statute so provides.

Article 121 (2)(a) of the Federal Constitution provides *inter alia*, that the Federal Court shall have exclusive jurisdiction to determine appeal from decisions of a High Court or a Judge thereof (except decisions of a High Court given by a registrar or other officer of the Court and appealable under federal law to a Judge of the Court). And the jurisdiction of the Federal Court to determine appeals from a High Court or a Judge thereof shall be such as may be provided by federal law (see Article 128 (3)). Now, s. 67(1) of the Courts of Judicature Act 1964 enacts that:

> "The Federal Court shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought".

But no appeal shall be brought to the Federal Court where, by any written law for the time being in force, the judgment or order of the High Court is expressly declared to be final [see s. 68 (1)(d)].

It was the submission of the Deputy State Attorney-General that s. 14 of the Sarawak Advocates Ordinance gives power to the Federal Court to hear and determine appeals only against suspension and/or disbarment of an advocate but not against rejection by the Honourable the Chief Justice of an application to be admitted as an advocate. As such it was argued that it would appear that the legislature wanted the decision of the Honourable the Chief Justice to be final in respect of the rejection of an application for admission as an advocate. With respect, we are unable to accept this contention. If the legislature had intended the decision of the Honourable the Chief Justice to be final and therefore unappealable it would have said so by express words inasmuch as such an interpretation cannot, in our opinion, arise by implication or by inference [see s. 68 (1)(d) of the Courts of Judicature Act 1964].

Next, it was contended by the Deputy State Attorney-General that s. 67(1) of the Courts of Judicature Act 1964 merely gives power to the Federal Court to hear and determine appeals from the decision of the High Court but not from the decision of the Honourable the Chief Justice. It was argued that the expressions "Chief Justice" and "High Court" are not synonymous according to the definition given in the 1964 Act. Section 3 defines:

"Chief Justice" means the Chief Justice of the High Court in Malaya or of the High Court in Borneo, as the case may require;

"High Court" means the High Court in Malaya and the High Court or either of them, as the case may require.

And the Act defines a "Judge" means a Judge of the Federal Court or of the High Court and includes the Lord President and a Chief Justice.

It was common ground that when the Honourable the Chief Justice sat and heard the appellant's application under s. 6 of the Sarawak Advocates Ordinance, he was doing so in his capacity as chief Justice of the High Court in Borneo. In *Dason Gaban v. Zulkifle bin Majun & Ors*. [1982] 1 MLJ 315 the Federal Court ruled that any judgment or order of any High Court contained in s. 67(1) of the Courts of Judicature Act 1964 means any judgment or order of a Judge exercising the ordinary civil jurisdiction of the High Court. Since the definition of a "Judge" includes a "Chief Justice" and if the decision of a Judge is appealable to the Federal Court it follows that a decision of the Honourable the Chief Justice exercising his ordinary civil jurisdiction of the High Court, under the Sarawak Advocates Ordinance, is also appealable. We therefore hold that the appeal is properly before the Federal Court and that we have jurisdiction to hear and determine it.

Now, s. 4(1) enacts that "No person shall be admitted as an advocate unless -

(d) he has been admitted to practise as a legal practitioner (by whether name called) by a Supreme Court or High Court exercising jurisdiction in any place within any territory within the Commonwealth.

The Deputy State Attorney-General contended that the term "the Commonwealth" should be given a restricted meaning to mean independent sovereign states of the Commonwealth. On the other hand, the appellant argued that the phrase should be given its ordinary meaning to include any territory under Her Britannic Majesty's protection. Since the Sarawak Advocates Ordinance had been declared Federal Law as from Malaysia Day vide Modification of Laws (Declaration of Federal Present Laws) (Sarawak) Order 1965 under L.N. 200/65 the meaning of "the Commonwealth", in our opinion, should be governed by the Interpretation and General Clauses Ordinance 1948. Although this Ordinance was repealed by the Interpretation Act 1967 s. 65(2) provides that:

"Notwithstanding sub-section (1) the Ordinance thereby repealed shall continue to apply to any written law to which it applied immediately before the commencement of this Act and to subsidiary legislation made after the commencement of this Act under such a written law".

It follows that the meaning to be assigned to the term "the Commonwealth" in s. 4(1)(d) of the Sarawak Advocates Ordinance is still to be governed by the 1948 Ordinance, unless there is something in the subject or context inconsistent with such construction or unless it is therein otherwise expressly provided and none exists here. "The Commonwealth" is defined by s. 2 of the 1948 Ordinance to mean -

(a) collectively the Commonwealth countries,

(b) any part of Her Britannic Majesty's dominions not being a Commonwealth country,

(c) any territory under the protection of a Commonwealth country, and

(d) any territory administered by the government of a Commonwealth country under the trusteeship system of the United Nations.

It is conceded that Hong Kong is a Crown colony, a territory under Her Britannic Majesty's protection. It follows that Hong Kong comes within (b) of the definition of "the Commonwealth". We therefore hold that the term "the Commonwealth" should be given the meaning assigned to it by s. 2 of the 1948 Ordinance and that the expression "any territory within the Commonwealth" in s. 4(1)(d) of the Sarawak Advocates Ordinance in our judgment, includes the Crown colony of Hong Kong.

It was lastly submitted by the Deputy State Attorney-General that the term "legal practitioner" in sub-clause(d) of s. 4(1) of the Sarawak Advocates Ordinance does not include a solicitor of the Supreme Court of the colony of Hong Kong and to do so would be to fly in the face of sub-clause (b) of the section which appears to apply especially to solicitors admitted to practise in the Courts in the British colonies. Section 4(1)(b) reads:

> No person shall be admitted as an advocate unless he is solicitor or attorney of a Superior Court in a British Possession to which the Colonial Solicitors Act 1900, the Solicitors Act 1932 or the Solicitors Act 1957 has been applied by Order in Council and who by virtue of any of the said Acts and of any Order in Council thereunder may be admitted as solicitor of the Supreme Court in England, Scotland, Northern Ireland or the Republic of Ireland without examination and without service of articles of clerkship.

For the purpose of this appeal it was conceded that the United Kingdom Solicitors Act 1957 has been extended to Hong Kong by an Order in Council vide the Overseas Solicitors (Admission) Order 1964. But s. 4 of the Solicitors Act 1957 enacts that a solicitor of a Supreme Court in any British Possession may be admitted as a solicitor in the United Kingdom only if the solicitor has practised for not less than three years in the British colony. The appellant, however, practised as a solicitor in Hong Kong for less than three years and therefore fails to qualify under the provision of s. 4 of the Solicitors Act 1957.

We have given careful consideration to this submission and in our opinion, the phrase "legal practitioner" does not and cannot include a solicitor of the Supreme Court of the colony of Hong Kong and to hold otherwise would render the classification under s. 4(1)(b) unnecessary and nugatory. In our judgment, the legislature has made its intention abundantly clear. If a person wishes to apply for admission as an advocate in Sarawak by virtue of having been admitted as a solicitor of the Supreme Court of Hong Kong he should apply under sub-clause (b) of s. 4(1) of the Advocates Ordinance. Furthermore, in our opinion, the term "legal practitioner" should be given a construction to accord with the provision of s. 8(1). That is to say, he should have been admitted and given exclusive right to appear, plead and practise as an advocate and solicitor in the Superior as well as in all the Subordinate Courts exercising jurisdiction within any territory within the Commonwealth. Since the appellant was perforced to concede that as a solicitor of the Supreme Court of Hong Kong he has only a limited right of audience in Courts, he cannot therefore bring himself within the meaning of sub-clause (d) of s.

4(1). We agree but for different reasons with the decision of the learned the Honourable the Chief Justice that the appellant is not qualified for admission as an advocate under sub-clause (d) thereof. The appeal is dismissed. We order that each party to pay his own costs. The deposit to be refunded to the appellant.

Also found at [1985] 1 CLJ 248